

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

December 23, 2003

In Reply Refer To:
Algonquin Gas Transmission Company
Docket No. RP02-492-003

Algonquin Gas Transmission Company
5400 Westheimer Court
Houston, Texas 77056

Attention: David A. McCallum
Director, Rates and Tariffs

Reference: Second Substitute First Revised Fourth Revised No. 640
and Original Sheet No. 640A to
FERC Gas Tariff, Fourth Revised Volume No. 1

Dear Mr. McCallum:

1. On February 19, 2003, Algonquin Gas Transmission Company (Algonquin) submitted the above referenced tariff sheets in compliance with the Commission order issued on February 6, 2003 (the February 6 Order).¹ The Commission accepts the referenced tariff sheets effective October 1, 2002, subject to conditions as detailed below. Algonquin is directed to file revised tariff sheets within 15 days of the date of this order.

Background

2. In the February 6 Order the Commission conditionally accepted certain tariff sheets, and required Algonquin to file revised tariff sheets clarifying that the partial day release quantity is calculated as the difference between the Maximum Daily Quantity (MDQ) on the Releasing Customer's contract and the amount scheduled by the Releasing Customer, as determined using the standards promulgated by the North American Energy Standards Board (NAESB).

¹ 102 FERC ¶ 61,149 (2003).

Details of the Instant Filing

3. Algonquin notes that in the February 6 Order, the Commission rejected certain alternate tariff sheets, explaining that “[I]f either the releasing or replacement shipper flows more than their allocated MDQ during the gas day, they would be responsible for paying the overrun rate . . . for all gas above their MDQ and would also be subject to potential overrun, scheduling or imbalance penalties.” Further, Algonquin notes that the Commission acknowledges it has authorized pipelines to charge twice the interruptible transportation rate for unauthorized overruns during non-critical periods and higher penalties for overruns during critical periods. Algonquin states that the Commission recognized in the February 6 Order that such overrun charges and penalties are designed to deter shippers from obtaining capacity free of charge in excess of contractual quantities. Algonquin contends by suggesting that the pipeline is “fully protected” if the shipper actually flows gas above its contract demand, the February 6 Order appears to contemplate that Algonquin’s tariff already contains a mechanism by which releasing and replacement shippers that overrun the contractual MDQ in a capacity release situation are charged for the extra transportation and penalized to the extent the overrun occurs during a critical period. Algonquin asserts that its tariff currently does not contain such a mechanism specific to capacity releases.

4. Algonquin states that to implement the partial day release quantity definition required by the Commission and consistent with the Commission’s stated policy of protecting the pipeline from the unauthorized delivery of total quantities that exceed the MDQ on the Releasing Customer’s contract, Algonquin is proposing to incorporate into Section 14.4(g) of the GT&C overrun charges and penalties that are specifically applicable to the capacity release situation. Shippers who overrun the contractual MDQ on the Releasing Customer’s contract will be required to pay for the transportation costs associated with that overrun, as well as associated penalties for overruns in times of restricted capacity.

Public Notice, Interventions and Protests

5. Public notice of the filing was issued on February 21, 2003, with interventions and protests due on or before March 3, 2003. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2003)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (jointly, ConEd) filed a protest to which Algonquin filed an answer.² The details of ConEd’s protest and Algonquin’s answer are discussed below.

² Although answers to protests are not permitted by Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2), the Commission finds good cause to waive the rule as Algonquin’s answer may aid in the disposition of the issues raised by its filing.

6. ConEd requests that the Commission not permit Algonquin to impose the new penalties in proposed in Section 14.4(g) on a retroactive basis back to October 1, 2002. In its answer, Algonquin states it is willing to waive any charges resulting from the implementation of Section 14.4(g) and the date of the order approving this section.

Discussion

7. The Commission finds that Algonquin's proposed tariff revision to provide that the partial day release quantity is calculated as the difference between the Maximum Daily Quantity (MDQ) on the Releasing Customer's contract and the amount scheduled by the Releasing Customer prior to the effective time of the release of capacity, complies with the February 6 Order. However, Algonquin's proposal to implement MDQ Overrun Charges and MDQ Overrun Penalties is rejected as beyond the scope of compliance with the February 6 Order.

8. In the February 6 Order, the Commission found that Algonquin was incorrect in contending that it would be required to deliver more than the contract demand in the original contract for partial day releases. If either the releasing or replacement shipper flowed more than their allocated MDQ during the gas day, they would be responsible for paying the overrun rate (interruptible transportation rate) for all gas above their MDQ and would also be subject to potential overrun, scheduling or imbalance penalties. The Commission further noted that "[T]hese are the same provisions that apply to any shipper overrunning its contract demand (regardless of whether it is engaged in a release transaction), and Algonquin has offered no justification for treating releasing shippers differently in this respect than other shippers." Finally, the Commission found that the pipeline would be "fully protected" if a releasing or replacement shipper exceeded the contractual demand, noting that "[T]he shipper exceeding its MDQ would be responsible for paying the added transportation costs plus any additional overrun, scheduling, or imbalance penalties that result from such action. For example, the Commission has authorized pipelines to charge twice the interruptible transportation rate for unauthorized overruns during non-critical periods and even higher penalties for overruns during critical periods."

9. In the February 6 Order, therefore, the Commission found that that the pipeline's existing provisions regarding contract overruns would protect it against contract overruns in the case of partial day releases, in the same way as these provisions protect the pipeline against contract overruns in all other situations. The Commission stated that the overrun charge for partial day releases should be the same as that applied in other contexts:

If either the releasing or replacement shipper flows more than their allocated MDQ during the gas day, they would be responsible for paying the overrun rate (interruptible transportation rate) for all gas above their MDQ and would also be subject to potential overrun, scheduling or

imbalance penalties. These are the same provisions that apply to any shipper overrunning its contract demand (regardless of whether it is engaged in a release transaction), and Algonquin has offered no justification for treating releasing shippers differently in this respect than other shippers.³

10. The February 6 Order required simply that Algonquin apply the generally applicable NAESB scheduling standards for all transactions to partial day releases.⁴

11. The Commission finds that Algonquin's tariff provides that shippers may tender quantities of gas in excess of the MDQ plus any applicable Fuel Reimbursement Quantity on any day if in Algonquin's reasonable judgment transportation of such gas can be accomplished by Algonquin without detriment to any other shipper under any of Algonquin's rate schedules. Algonquin deems such excess quantities to be Authorized Overrun Quantities, and the shipper pays Authorized Overrun Charges. Section 31.2 of Algonquin's GT&C sets forth a penalty "in the event that Customer takes Unauthorized Contract Overrun Gas and such Unauthorized Contract Overrun Gas threatens system integrity and deliveries to firm shippers."⁵ The penalty set forth in Section 31.2 is equal to "three times the daily Gas Daily posting" for the day on which the violation occurred, but not to exceed \$15 per Dth. The Commission finds that parties to partial day releases should be treated the same as other shippers. If a partial day release shipper takes Authorized Overrun Quantities, it should pay Authorized Overrun Charges; if a partial day release shipper takes Unauthorized Contract Overrun Gas, then the overrun charge mechanism set forth in Section 31.2 should be applied. Algonquin cannot treat contract overruns associated with partial day releases any differently than other contract overruns. Accordingly, Algonquin's proposal for new overrun charges or new penalties is unnecessary because Algonquin's tariff already includes a charge for contract overrun for partial day releases.

12. Inasmuch as the Commission is rejecting Algonquin's proposed new overrun charges and penalties, ConEd's request that the Commission not permit Algonquin to impose the new penalties on a retroactive basis is denied as moot.

³ 102 FERC ¶ 61,149 at P 25.

⁴ The reference in the order to the ability of the pipeline to charge twice the interruptible transportation rate for unauthorized overruns during non-critical periods and even higher penalties for overruns during critical periods was simply an example of the type of contract overrun provisions the Commission has approved in Order No. 637 proceedings.

⁵ See Tariff Sheet No. 684.

13. Consistent with the discussion above, Algonquin is directed to refile the referenced tariff sheets, removing its proposal to add an MDQ Overrun Charge and the MDQ Overrun Penalty. The referenced tariff sheets are accepted, effective October 1, 2002, subject to this condition. Algonquin is directed to file revised tariff sheets within 15 days of the date of this order.

By direction of the Commission.

Linda Mitry,
Acting Secretary.

cc: Steven E. Hellman, Assistant General Counsel
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